

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA

3 THIS DOCUMENT APPLIES TO
4 PLAINTIFF(S): CHARLES DELUCIA
5 AND DOROTHY DELUCIA

6 Charles Delucia individually and as the p/r
7 for the Estate of Dorothy DeLucia

8 Plaintiffs

9 v.

10 ☐ AMYLIN PHARMACEUTICALS, LLC,
11 ☐ ELI LILLY AND COMPANY,
12 ☒ MERCK SHARP & DOHME CORP.,
13 ☐ NOVO NORDISK INC.,

14 (Check all the above that apply)

15 Defendants

Pertains To Civil Action No.:

In Re: Incretin-Based Therapies
Products Liability Litigation

MDL NO. 2452

**SHORT FORM COMPLAINT
FOR DAMAGES**

Case No.: 13md2452 AJB(MDD)

16 **SHORT FORM COMPLAINT FOR DAMAGES**

17 COMES NOW the Plaintiff(s) named herein, and for Complaint against the
18 Defendants named herein, incorporates and fully adopts the Master Form Complaint
19 (the "Master Complaint") in MDL No. 2452 by reference. Plaintiff(s) further shows
20 the Court as follows:

21 **JURISDICTION AND VENUE**

22 1. Jurisdiction in this Complaint is based on:

23 ☒ Diversity of Citizenship

24 ☐ Other (As set forth below, the basis of any additional ground for
25 jurisdiction must be pleaded in sufficient detail as required by the
26 applicable Federal Rules of Civil Procedure):

27 _____
28 2. District Court and Division in which you might have otherwise filed

absent the direct filing order entered by this Court: District of New Jersey

3. Plaintiff(s) further adopts the allegations contained in the following paragraphs of the Jurisdiction and Venue section of the Master Complaint:

☒ Paragraph 10;

☒ Paragraph 11;

☐ Paragraph 12;

☐ Paragraph 13;

☒ Paragraph 14;

☒ Paragraph 15; and/or

☐ Other allegations as to jurisdiction and venue (Plead in sufficient detail in numbered paragraphs (numbered to begin with 3(a)) as required by the applicable Federal Rules of Civil Procedure): _____

PLAINTIFF/INJURED PARTY INFORMATION

4. Injured/Deceased Party's Name: Dorothy DeLucia (the "Injured Party").

5. Any injury (or injuries) suffered by the Injured Party in addition to those injuries related to the Injured Party's Pancreatic Cancer, which is alleged to have been caused by the drug(s) ingested as set forth below (put "None" if applicable): metastasis to liver.

6. Injured Party's spouse or other party making loss of consortium claim: Charles DeLucia.

7. Other Plaintiff(s) and capacity, if Injured Party is deceased or otherwise incapacitated (i.e., administrator, executor, guardian, representative, conservator, successor in interest): Charles Delucia, husband and personal representative.

8. City(ies) and State(s) of residence of Injured Party at time of ingestion

of the Drug(s): Medford, New Jersey.

9. City and State of residence of Injured Party at time of pancreatic cancer diagnosis (if different from above): Medford, New Jersey.

10. City and State of residence of Injured Party at time of diagnosis of other Injury(ies) alleged in Paragraph 5 (if different from above): Medford, New Jersey.

11. If applicable, City and State of current residence of Injured Party (if different from above): Medford, New Jersey.

12. If applicable, City and State of residence of Injured Party at time of death (if different from above): Medford, New Jersey.

13. If applicable, City and State of current residence of each Plaintiff, including any Consortium and or other Plaintiff(s) (i.e., administrator, executor, guardian, representative, conservator, successor in interest): Charles DeLucia, Medford, New Jersey

14. Check box(es) of product(s) (the "Drugs") for which you are making claims in this Complaint:

☐ Byetta. Dates of use: _____.

☒ Januvia. Dates of use: January 2010 to June 2010.

☐ Janumet. Dates of use: _____.

☐ Victoza. Dates of use: _____.

15. Date of pancreatic cancer diagnosis: January 20, 2014.

16. If applicable, date of other injuries alleged in Paragraph 5: _____.

17. If applicable, date of death: April 8, 2014.

DEFENDANTS NAMED HEREIN

(Check Defendants against whom Complaint is made)

☐ Amylin Pharmaceuticals, LLC

- ☐ Eli Lilly and Company
- ☒ Merck Sharp & Dohme Corp.
- ☐ Novo Nordisk Inc.

CAUSES OF ACTION

(Counts in the Master Complaint brought by Plaintiff(s))

- ☒ Count I – Strict Liability – Failure to Warn
- ☒ Count II – Strict Liability – Design Defect
- ☒ Count III – Negligence
- ☒ Count IV – Breach of Implied Warranty
- ☒ Count V – Breach of Express Warranty
- ☒ Count VI – Punitive Damages
- ☒ Count VII – Loss of Consortium
- ☒ Count VIII – Wrongful Death
- ☒ Count IX – Survival Action
- ☐ Other Count(s): _____

Plead factual and legal basis for any Other Count(s) in separately numbered Paragraphs (beginning with Paragraph 18) that provide sufficient information and detail to comply with the applicable Federal Rules of Civil Procedure.

_____.

PRAYER FOR RELIEF AND, AS APPLICABLE,

PRAYER FOR RELIEF FOR SURVIVAL AND WRONGFUL DEATH

WHEREFORE, Plaintiff(s) pray(s) for relief as set forth in the Master Complaint filed in MDL No. 2452.

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JURY DEMAND

Plaintiff(s) hereby ☒ demands ☐ **does not** demand a trial by jury on all issues so triable.

Dated: September 18, 2014

RESPECTFULLY SUBMITTED,

By: /s/ Maxwell S. Kennerly
Maxwell S. Kennerly, Esq.
The Beasley Firm, LLC
1125 Walnut Street
Philadelphia, PA 19107
Attorneys for Plaintiffs